

AMENDED IN SENATE AUGUST 4, 2010

AMENDED IN ASSEMBLY MAY 5, 2010

AMENDED IN ASSEMBLY APRIL 21, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2572

Introduced by Assembly Member Bradford

February 19, 2010

An act to amend Sections 5360, 5373.1, 5374, 5374.5, 5378, 5378.6, 5385, 5392, and 5411.5 of the Public Utilities Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2572, as amended, Bradford. Charter-party carriers of passengers.

The California Constitution establishes the Public Utilities Commission with jurisdiction over all public utilities, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers, as defined, are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act defines a charter-party carrier of passengers, subject to certain exceptions, to mean every person that is engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway.

This bill would provide that a charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated

by a hired driver. The bill would, however, make certain provisions of the act inapplicable to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

Under existing law, a violation of the Passenger Charter-Party Carriers' Act or an order or direction of the commission pursuant to the act is a crime.

This bill, by expanding the definition of a charter-party carrier of passengers, would impose a state-mandated local program by expanding the definition of a crime.

The act requires a charter-party carrier of passengers to obtain from the commission a certificate of public convenience and necessity, or for certain carriers, to obtain a permit, sets forth the requirements to be met before a certificate or permit may be issued or renewed, establishes fees to be charged by the commission to different classes of certificate holders and for permit holders for issuance or renewal of a certificate or permit, and provides that a certificate or permit, or renewal thereof, is effective for 3 years, unless suspended or revoked by the commission.

This bill would revise the fees charged by the commission for a new or renewed certificate or permit. The bill would authorize the commission to cancel, revoke, or suspend any operating certificate or permit upon the failure of a certificate or permit holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirements established by the governing body of an airport.

Existing law authorizes a peace officer, as defined, that arrests a person for operating a charter-party carrier of passengers without a valid certificate or permit to impound and retain possession of the vehicle, subject to certain exceptions and provisions for notice and return of the vehicle. Existing law limits this authority to arrests made at a public airport or within 2 miles of the international border with Mexico.

This bill would delete that limitation.

Existing law requires that an impounded vehicle be immediately returned to the owner, without cost to the owner, if the infraction or violation is not prosecuted or is dismissed, or used in violation of a specified law without the knowledge and consent of the owner.

This bill would delete the requirement that the impounded vehicle be returned without cost to the owner. The bill would require that if a vehicle is seized due to a violation of a person other than the owner,

the impounded vehicle be returned to the owner after all impoundment fees are paid.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to achieve all
2 of the following:

3 (a) Ensure that the Public Utilities Commission ~~has~~ *utilizes*
4 access to ~~real-time~~ information on drivers for licensed charter-party
5 carriers of passengers ~~by utilizing~~ *through* the Department of Motor
6 Vehicle's Employer Pull Notice Program implementing Section
7 1808.1 of the Vehicle Code.

8 (b) Ensure the public safety when utilizing the services of
9 charter-party carriers of passengers and to increase enforcement
10 of laws to prevent illegal charter-party operators.

11 (c) Have the Public Utilities Commission implement procedures
12 to have an approved drug and alcohol testing provider submit to
13 the commission timely information on the status of licensed
14 charter-party carriers of passengers that have contracted with the
15 drug and alcohol testing provider for compliance with commission
16 rules and statutes.

17 (d) Create an online renewal process for charter-party carriers
18 of passengers and a renewal process that is administratively
19 efficient.

20 SEC. 2. Section 5360 of the Public Utilities Code is amended
21 to read:

22 5360. Subject to the exclusions of Section 5353, "charter-party
23 carrier of passengers" means every person engaged in the
24 transportation of persons by motor vehicle for compensation,
25 whether in common or contract carriage, over any public highway
26 in this state. "Charter-party carrier of passengers" includes any
27 person, corporation, or other entity engaged in the provision of a

1 hired driver service when a rented motor vehicle is being operated
2 by a hired driver.

3 SEC. 3. Section 5373.1 of the Public Utilities Code is amended
4 to read:

5 5373.1. (a) Each application for a charter-party carrier of
6 passengers certificate or permit shall be accompanied by a filing
7 fee as follows:

8 (1) Class A certificates (new): one thousand five hundred dollars
9 (\$1,500).

10 (2) Class A certificates (renewal): one hundred dollars (\$100).

11 (3) Class B certificates (new): one thousand dollars (\$1,000).

12 (4) Class B certificates (renewal): one hundred dollars (\$100).

13 (5) Class C certificates (new): one thousand dollars (\$1,000).

14 (6) Class C certificates (renewal): one hundred dollars (\$100).

15 (7) Permits (new): one thousand dollars (\$1,000).

16 (8) Permits (renewal): one hundred dollars (\$100).

17 (b) The commission shall also require each application to be
18 accompanied by a fee to offset the cost of the charter-party carrier
19 bus terminal inspections conducted by the Department of the
20 California Highway Patrol. The fee shall be fifteen dollars (\$15)
21 per tour bus, as defined in Section 612 of the Vehicle Code, or a
22 maximum of six thousand five hundred dollars (\$6,500) for each
23 operating carrier.

24 (c) The commission shall require each charter-party carrier that
25 operates tour buses, as defined in Section 612 of the Vehicle Code,
26 to undergo an annual bus terminal inspection conducted by the
27 Department of the California Highway Patrol and to pay an annual
28 fee of fifteen dollars (\$15) per tour bus, or a maximum of six
29 thousand five hundred dollars (\$6,500), to offset the cost of the
30 inspections.

31 (d) The commission shall deposit the fees collected pursuant to
32 subdivisions (b) and (c) in the Motor Vehicle Account in the State
33 Transportation Fund.

34 SEC. 4. Section 5374 of the Public Utilities Code is amended
35 to read:

36 5374. (a) (1) Before a permit or certificate is issued or
37 renewed, the commission shall require the applicant to establish
38 reasonable fitness and financial responsibility to initiate and
39 conduct or continue to conduct the proposed or existing
40 transportation services. The commission shall not issue or renew

1 a permit or certificate pursuant to this chapter unless the applicant
2 meets all of the following requirements:

3 (A) It is financially and organizationally capable of conducting
4 an operation that complies with the rules and regulations of the
5 Department of the California Highway Patrol governing highway
6 safety.

7 (B) It is committed to observing the hours of service regulations
8 of state and, where applicable, federal law, for all persons, whether
9 employees or subcarriers, operating vehicles in transportation for
10 compensation under the certificate.

11 (C) It has a preventive maintenance program in effect for its
12 vehicles used in transportation for compensation that conforms to
13 regulations of the Department of the California Highway Patrol
14 in Title 13 of the California Code of Regulations.

15 (D) It participates in a program to regularly check the driving
16 records of all persons, whether employees or subcarriers, operating
17 vehicles used in transportation for compensation.

18 (E) It has a safety education and training program in effect for
19 all employees or subcarriers operating vehicles used in
20 transportation for compensation.

21 (F) It will maintain its vehicles used in transportation for
22 compensation in a safe operating condition and in compliance with
23 the Vehicle Code and with regulations contained in Title 13 of the
24 California Code of Regulations relative to motor vehicle safety.

25 (G) It has filed with the commission the certificate of workers'
26 compensation insurance coverage or statement required by Section
27 5378.1.

28 (H) It has provided the commission an address of an office or
29 terminal where documents supporting the factual matters specified
30 in the showing required by this subdivision may be inspected by
31 the commission and the Department of the California Highway
32 Patrol.

33 (I) It provides for a mandatory controlled substance and alcohol
34 testing certification program as adopted by the commission
35 pursuant to Section 1032.1.

36 (J) Subparagraphs (C), (F), and (H) do not apply to a
37 charter-party carrier of passengers engaged in the provision of a
38 hired driver service when a rented motor vehicle is being operated
39 by the hired driver.

(2) With respect to subparagraphs (B) and (F) of paragraph (1), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(3) The commission may require, as a precondition to the issuance of a permit or certificate, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

(b) In addition to the requirements in subdivision (a), charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

(c) The commission may delegate to its executive director or that executive director's designee the authority to issue, renew, or authorize the transfer of, charter-party carrier permits or certificates and to make the findings specified in subdivision (a) that are necessary to that delegated authority.

SEC. 5. Section 5374.5 of the Public Utilities Code is amended to read:

5374.5. (a) At the time of each bus terminal inspection conducted by the Department of the California Highway Patrol pursuant to subdivision (c) of Section 34501 of the Vehicle Code, every charter-party carrier of passengers shall furnish both the Department of the California Highway Patrol and the commission a list, prepared under oath, of all vehicles used in transportation for compensation during the period since the last inspection. The commission shall furnish a copy of the list to the carrier's insurer, if the carrier's accident liability protection is provided by a policy of insurance. This subdivision does not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.

(b) If the charter-party carrier's insurer informs the commission that the carrier has failed to obtain insurance coverage for any vehicle reported on the list, the commission may, in addition to any other penalty provided in this chapter, for a first occurrence, suspend the carrier's certificate or permit or impose a fine, or both, and for a second or subsequent occurrence may suspend or revoke the certificate or impose a fine, or both.

1 SEC. 6. Section 5378 of the Public Utilities Code is amended
2 to read:

3 5378. (a) The commission may cancel, revoke, or suspend any
4 operating permit or certificate issued pursuant to this chapter upon
5 any of the following grounds:

6 (1) The violation of any of the provisions of this chapter, or of
7 any operating permit or certificate issued thereunder.

8 (2) The violation of any order, decision, rule, regulation,
9 direction, demand, or requirement established by the commission
10 pursuant to this chapter.

11 (3) The conviction of the charter-party carrier of passengers of
12 any misdemeanor under this chapter while holding operating
13 authority issued by the commission or the conviction of the carrier
14 or its officers of a felony while holding operating authority issued
15 by the commission, limited to robbery, burglary, larceny, fraud,
16 or intentional dishonesty for personal gain.

17 (4) The rendition of a judgment against the charter-party carrier
18 of passengers for any penalty imposed under this chapter.

19 (5) The failure of a charter-party carrier of passengers to pay
20 any fee imposed upon the carrier within the time required by law.

21 (6) On request of the holder of the permit or certificate.

22 (7) Failure of a permit or certificate holder to operate and
23 perform reasonable service. That failure may include repeated
24 violations of the Vehicle Code or of regulations contained in Title
25 13 of the California Code of Regulations relative to motor vehicle
26 safety, by employees of the permitholder or certificate holder, that
27 support an inference of unsafe operation or willful neglect of the
28 public safety by the permitholder or certificate holder.

29 (8) Consistent failure of the charter-party carrier of passengers
30 to maintain its vehicles in a safe operating condition and in
31 compliance with the Vehicle Code and with regulations contained
32 in Title 13 of the California Code of Regulations relative to motor
33 vehicle safety, as shown by the records of the commission, the
34 Department of Motor Vehicles, the Department of the California
35 Highway Patrol, or the carrier. This paragraph does not apply to
36 a charter-party carrier of passengers engaged in the provision of
37 a hired driver service when a rented motor vehicle is being operated
38 by the hired driver.

39 (9) The knowing and willful filing of a false report that
40 understates revenues and fees.

1 (10) Failure of a permit or certificate holder, or of any of its
2 employees, to follow any order, decision, rule, regulation, direction,
3 demand, ordinance, or other requirement established by the
4 governing body of an airport, including solicitation practices.

5 (b) The commission may levy a civil penalty of up to seven
6 thousand five hundred dollars (\$7,500) upon the holder of an
7 operating permit or certificate issued pursuant to this chapter, for
8 any of the grounds specified in subdivision (a), as an alternative
9 to canceling, revoking, or suspending the permit or certificate. The
10 commission may also levy interest upon the civil penalty, which
11 shall be calculated as of the date on which the civil penalty is
12 unpaid and delinquent. The commission shall deposit at least
13 monthly all civil penalties and interest collected pursuant to this
14 section into the General Fund.

15 SEC. 7. Section 5378.6 of the Public Utilities Code is amended
16 to read:

17 5378.6. (a) The commission shall deny a new or renewal
18 application for a charter-party carrier certificate or permit upon
19 receipt of a written recommendation from the Department of the
20 California Highway Patrol that specifically indicates compliance
21 with subdivision (b), and indicates that the applicant has failed to
22 do either of the following:

23 (1) Maintain any vehicle used in transportation for compensation
24 in a safe operating condition or to comply with the Vehicle Code
25 or the regulations contained in Title 13 of the California Code of
26 Regulations relative to motor carrier safety. This paragraph does
27 not apply to a charter-party carrier of passengers engaged in the
28 provision of a hired driver service when a rented motor vehicle is
29 being operated by the hired driver.

30 (2) Enroll all drivers in the Department of Motor Vehicles'
31 Employer Pull Notice Program implementing Section 1808.1 of
32 the Vehicle Code.

33 (b) Before transmitting a recommendation pursuant to
34 subdivision (a) to the commission, the Department of the California
35 Highway Patrol shall notify the applicant for the charter-party
36 carrier certificate or permit of all of the following in writing:

37 (1) That the department has determined that the applicant's
38 safety record is unsatisfactory, furnishing a copy of any
39 documentation or summary of any other evidence supporting the
40 determination.

1 (2) That the determination may result in a denial of the
2 applicant's certificate or permit by the commission.

3 (3) That the applicant may request a review of the determination
4 by the department within five days of its receipt of the notice
5 required under this subdivision. The department shall, upon request,
6 conduct and evaluate that review prior to transmitting any
7 notification to the commission pursuant to subdivision (a).

8 (c) Whenever the commission denies an application for renewal
9 pursuant to subdivision (a), the commission shall furnish the
10 charter-party carrier written notice of the denial and shall hold a
11 hearing within a reasonable time, not to exceed 21 days, after a
12 written request is filed with the commission, with a copy thereof
13 furnished to the Department of the California Highway Patrol. At
14 the hearing, the carrier shall show cause why the denial was
15 improper or unwarranted. At the conclusion of the hearing, the
16 commission may, in addition to any other remedy provided in this
17 part, reverse the denial, or sustain the denial.

18 (d) Any applicant for a charter-party carrier certificate or permit
19 denied pursuant to subdivision (a), whose denial has not been
20 reversed as a result of the hearing provided for in subdivision (c),
21 that wishes to obtain a certificate or permit shall reapply for the
22 desired authority.

23 SEC. 8. Section 5385 of the Public Utilities Code is amended
24 to read:

25 5385. A charter-party carrier of passengers, except those
26 engaged in the provision of a hired driver service when a rented
27 motor vehicle is being operated by the hired driver, shall not
28 operate any motor vehicle on any public highway unless there is
29 displayed on the vehicle a distinctive identifying symbol in the
30 form prescribed by the commission, showing the classification to
31 which the carrier belongs. Such an identifying symbol shall not
32 be displayed on any vehicle until a permit or certificate of public
33 convenience and necessity under this chapter has been issued to
34 the carrier. The identifying symbol displayed by charter-party
35 carriers subject to the Interstate Commerce Commission shall serve
36 in lieu of the display requirements of this section.

37 SEC. 9. Section 5392 of the Public Utilities Code is amended
38 to read:

39 5392. (a) The protection required under Sections 5391 and
40 5391.2 shall be evidenced by the deposit of any of the following

1 with the commission covering each vehicle used or to be used
2 under the certificate or permit applied for:

3 (1) A policy of insurance, issued by a company licensed to write
4 insurance in this state, or by nonadmitted insurers subject to Section
5 1763 of the Insurance Code, if the policies meet the rules
6 promulgated therefor by the commission.

7 (2) A bond of a surety company licensed to write surety bonds
8 in the state.

9 (3) Evidence of the qualification of the charter-party carrier of
10 passengers as a self-insurer as may be authorized by the
11 commission.

12 (b) This section does not apply to a charter-party carrier of
13 passengers engaged in the provision of a hired driver service when
14 a rented motor vehicle is being operated by the hired driver.

15 SEC. 10. Section 5411.5 of the Public Utilities Code is
16 amended to read:

17 5411.5. (a) Whenever a peace officer, as defined in Chapter
18 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
19 Code, arrests a person for operation of a charter-party carrier of
20 passengers without a valid certificate or permit, the peace officer
21 may impound and retain possession of the vehicle.

22 (b) Whenever a peace officer, as defined in Chapter 4.5
23 (commencing with Section 830) of Title 3 of Part 2 of the Penal
24 Code, arrests a person for operating a charter-party carrier of
25 passengers as a taxicab in violation of an ordinance or resolution
26 of a city, county, or city and county, the peace officer may impound
27 and retain possession of the vehicle.

28 (c) If the vehicle is seized from a person who is not the owner
29 of the vehicle, the impounding authority shall immediately give
30 notice to the owner by first-class mail.

31 (d) The vehicle shall immediately be returned to the owner if
32 the infraction or violation is not prosecuted or is dismissed, the
33 owner is found not guilty of the offense, or it is determined that
34 the vehicle was used in violation of Section 5411 without the
35 knowledge and consent of the owner. The vehicle shall be returned
36 to the owner upon payment of any fine ordered by the court. If the
37 vehicle is seized due to a violation of a person other than the owner
38 of the vehicle, the vehicle shall be returned to the owner after all
39 impoundment fees are paid. After the expiration of six weeks from
40 the final disposition of the criminal case, unless the owner is in

1 the process of making payments to the court, the impounding
2 authority may deal with the vehicle as lost or abandoned property
3 under Section 1411 of the Penal Code.

4 (e) At any time, a person may make a motion in superior court
5 for the immediate return of the vehicle on the ground that there
6 was no probable cause to seize it or that there is some other good
7 cause, as determined by the court, for the return of the vehicle. A
8 proceeding under this section is a limited civil case.

9 (f) No peace officer, however, may impound any vehicle owned
10 or operated by a nonprofit organization exempt from taxation
11 pursuant to Section 501(c)(3) of the Internal Revenue Code which
12 serves youth or senior citizens and provides transportation
13 incidental to its programs or services or a rented motor vehicle
14 that is being operated by a hired driver of a charter-party carrier
15 of passengers that is providing hired driver service.

16 SEC. 11. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.